

Looking at the cited references, Berman discloses a system for playback of network audio material on demand in response to user selection. Berman fails to teach or suggest a buffer within a second memory, which pre-caches consecutively downloaded small portions of songs forming a sequence of songs to be played, as

5 claimed in independent Claims 1, 6, and 16. In fact, Berman teaches away from the present invention, especially at col. 12, lines 10-25, where it discloses specifically that data for other selected songs is downloaded into separate buffers in an alternating fashion, and that a buffer is not expected to have sufficient capacity to contain the entire data needed for one song.

10 Zainoulline does not remedy any of the deficiencies of Berman. Zainoulline fails to teach or suggest a buffer within a second memory, which pre-caches consecutively downloaded small portions of songs forming a sequence of songs to be played, as

15 claimed in independent Claims 1, 6, and 16. Furthermore, Berman fails to teach or suggest a combination with Zainoulline and Zainoulline fails to teach or suggest a combination with Berman. It would be impermissible hindsight based on Applicant's own disclosure to combine the teachings of the two references and to arrive at the present invention. Moreover, such an alleged combination would still fail to teach or

20 suggest a buffer within a second memory, which pre-caches consecutively downloaded small portions of songs forming a sequence of songs to be played, as claimed in independent Claims 1, 6, and 16.

Thus, Applicant respectfully submits that independent Claims 1, 6, 16 are distinguishable over Berman and Zainoulline, taken alone or in combination.

25 Furthermore, Claims 2-5, 7-15, and 17-25, dependent directly or indirectly from independent Claims 1, 6, 16, respectively, are also distinguishable over Berman and Zainoulline, taken alone or in combination, at least for the same reasons as stated above.

30 Respectfully submitted,

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